

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

74-1552

38

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MARY HAYS WEIK, Pro Se

vs.

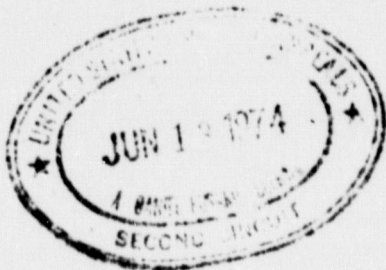
COLUMBIA UNIVERSITY

Docket No. 74-1552

BRIEF OF THE APPELLANT

and Appendix

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UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Appealed From

U S District Court
For Southern N.Y.

Judge Richard Owen
Presiding

MARY HAYS WEIK, Pro Se

vs.

COLUMBIA UNIVERSITY

Docket No. 74 - 1552

B R I E F O F T H E A P P E L L A N T

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UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MARY HAYS WEIK, Pro Se
vs.
COLUMBIA UNIVERSITY
Docket No. 74 - 1552

B R I E F

PRELIMINARY STATEMENT

On Dec. 22, 1966, four professors at Columbia University, joined by three local Morningside Heights residents, protested the building of a large Triga Nuclear Research Reactor directly on Columbia's campus, in the midst of one of New York City's most densely populated uptown areas. They were overruled, and construction continued; but three years later, in 1969, a wider and more stubborn protest stirred the community, and a U.S. Atomic Energy Commission Hearing, called by the citizens, was held in November 1969. A N.Y. City Council Hearing got nowhere.

In April 1971, for the first time in its history, the AEC denied an applicant's license - contending that the Columbia reactor, because its safety had been insufficiently proved, would receive no operating permit. But the issue was not ended. In May 1972 the AEC's Appeal Board overturned the 1971 decision. Protests ensued. Though reactor fueling has been delayed by subsequent litigation, the license remains on record. Today the 3-story-high reactor still stands empty on Columbia Campus - carefully

maintained and ready for refueling at any time its owners may decide to give proper notice: potentially vulnerable then to sabotage and violent accident.

POINTS AT ISSUE

Review is asked for the following points of possible error:

1. Did the District Court err in overlooking the innate obligation of City and University to protect the health & safety of university students and staff and the surrounding Morningside community?
2. Did the District Court err in presuming the issue concerned only the U.S. Atomic Energy Commission, under the para-legal standards of the 1954 "Atomic Energy Law?" (The case had been brought, in fact, not against the U.S. Atomic Energy Commission, but against a private New York corporation, Columbia University.)
3. Did the District Court err in condoning the conflict of interest present in allowing safety decisions on the Columbia reactor to be made by longtime City appointees, such as Dr. John Ray Dunning, former Chairman of Columbia's Engineering School, and longtime chairman of City and State advisory boards? (Dr. Dunning, a director of Canadian uranium mines and nuclear bomb-testing projects, is also connected with the Vitro Engineering Company, which built the disastrous Indian Point I nuclear power plant.)
4. Is the Columbia reactor a Test Reactor, and therefore illegally sited?

HISTORY OF THE CASE

Suits and protests by residents of the area have been in almost continuous existence, ever since the reactor was first proposed. A current appeal to the U.S. Supreme Court by two longtime ^{opponents} is being carried out by the Morningside Renewal Council and Riverside Democrats, Inc. As the citizen who first called

in 1969 for a public hearing on the reactor, I entered a motion in May, 1972 in the Federal District Court of Southern New York asking that any loading of nuclear fuel in the Columbia Reactor be enjoined, and that an immediate restraining order be granted. The restraining order was denied, by a judge who is on the lecture staff of Columbia Law School.

STATEMENT OF FACTS

My citizen's injunction against any future loading of nuclear fuel in the Columbia Reactor is based on the following damaging facts, which would make its operation a serious threat to the whole Metropolitan New York community:

1) That the Columbia Reactor's massive but seldom-mentioned "pulsing" feature, which can occur every 6 minutes and raise the reactor's capacity from 250 kilowatts to 250,000 kw, would create, by the AEC's own Manual on Research Reactors (Martens and Jacobson, p.28) "35 times more radioisotopes . . . than the reactor's normal power."

35 times more isotopes means 35 times more radioactive release, once every 6 minutes,
18-story
to the Engineering Buildings/ventilation stack and the air inhaled by students at class in surrounding high-rise university buildings (almost the stack's height), and by the adjacent Morningside residents. Could common-sense and human decency deny a special hazards classification to such a reactor, or permit its siting in an area as densely populated as the Morningside community (680 persons to the acre)

that prepared for
Compare the casual siting of the Columbia reactor with/a 10 kw. pulsing reactor near Malta, New York: "On Sep. 8/63 the (N.Y. Atomic & Space) Authority selected a 1,000-acre site . . . at the center of an uninhabited 7,000-acre forest. . . as the location of a nuclear pulsed reactor." (emphasis added).

2) That the Columbia Reactor, because of its special nature and component parts,

violates the vital "Fire Prevention Code" of the City of New York. This official Fire Code, which governs the ^{safety} standards of the Fire Administration System of our City. An important section of the New York City Charter and Administrative Code (Chapter 19 - 2720, page 29) states:

"It shall be unlawful to manufacture . . . explosives in the city." And it further states that such combustibles can be seized by the Fire Commissioner as contraband "and destroyed or otherwise disposed of at his discretion." Yet directly on the Columbia Campus stands the University's Triga Reactor, which would be fueled, ^{according to} Columbia's 1969 Safety Evaluation Report, with Zirconium-Uranium fuel, subject to violent "water-metal reactions" which the AEC's Brookhaven Report (Appendix A, p.18-21) calls the most serious danger in the event of a reactor accident . . . (equalling or exceeding the energy . . . released in the worst possible nuclear (runaway)." In other words, it would cause an explosion thousands of times worse than any conventional explosion. Such a potential disaster must have been feared when the million-dollar firehouse described in Mrs. Anna Bennett's letter below ^{according to the Fire Department,} as needed/on account of "radiological experiments and (the) nuclear reactor in use at Columbia University." Just what are these "radiological experiments," and why are they allowed in this densely crowded section of our city?

3) Third, must be listed the permanent threat of the Columbia Reactor to New York's the 135-year old Croton Aqueduct, with vital water supply, due to its adjacency to a major earthquake fault only a few blocks away. Columbia's ¹⁹⁶⁹ Safety Analysis Report ^(page 11) admits to the existence of this earthquake fault, running across 125th Street, but points out that 125th Street is beyond the quarter-mile limit prescribed by the AEC. However, a 1966 report on geologic test borings by the NYC Board of Water Supply (p.35, "Report on the 3rd City Tunnel, First Stage (July '66) places the main fault zone closer to the reactor site, on 120th St. just west of Amsterdam Avenue, stating "Along Amsterdam Avenue in the so-called

Manhattanville neighborhood an extensive fault zone was probed between W. 123rd and West 129th St." (W. 123rd Street is only 1000 feet north of the Columbia Reactor - less than 1/5 of a mile.)

We think of the West as earthquake country, but the fact is, the eastern part of America has had its share too of such events, with a record of almost a thousand earthquakes of varying degree since the country's settlement. Some are as recent as the 1930's. D.H. Newland, NY State geologist, lists many of these happenings in "Earthquakes in N.Y. State," and warns that earthquakes follow no rules. Yet the Columbia Safety Report passes lightly over the 123rd -to-129th Street fault, stating (p.11) "There have been no earthquakes on Manhattan Island within man's recorded history." This is not true. Not only is one such quake recorded in Manhattan in March 1893 and another in the 1930s, but one of "Intensity 7" (quite a strong one) has been recorded by the U.S. Coast & Geodetic Survey. There is obviously no guarantee that an earthquake could not happen near the Manhattanville Fault in Morningside.

That no earthquakes have recently occurred in the Columbia area offers no security. Denver, where suddenly a series of 700 tremors of varying intensity began in April 1962, had had none since 1882. The Denver quakes occurred in rock strikingly similar to that in the Columbia-Morningside area. It remains to be proved that the repeated shocks from Columbia's pulsing Triga reactor - once every 6 minutes, from 250 kw to 250,000 kw - might not trigger some disturbance to the surrounding area.

Finally, regarding the "self-regulating feature" of Columbia's Triga which its makers, Gulf General, claim, has resulted in "accident-free" plants, even such safety features can fail under certain conditions, say experts ; and a Public Health Report, ("A Review of Operating Experience of University-Owned and Operated Reactors" by Evan J. Vinberg, January 1970) shows 9 recorded Triga upsets between 1964 and 1969 alone, on various U.S. campuses.

RELIEF SOUGHT AND CONCLUSION

The relief sought and conclusion reached is: That the University shall recognize its obligation to protect the health and safety of its community; that its Pulsing Nuclear Reactor be permanently enjoined and put aside; and that no loading of nuclear fuel in the reactor shall be permitted. Protection must be provided to citizen the sovereign/against increasing inroads on his rights and personal safety.

Date _____

(Signed)

Mary H. White

REFERENCES

- New York City Charter and Administrative Code: Chapter 19 Fire Department: Fire Prevention Code; Part I Combustible and Hazardous Trades (1969)
- Columbia University: Safety Evaluation of Columbia's Triga II Reactor - by Lidofsky, Melkonian and Woram (1969)
- U.S. Atomic Energy Commission: Transcript of Columbia Hearings, Oct/71 Brookhaven Report (Wash 740), Manual on Research Reactors: Martens & Jacobson Initial Decision on Columbia Triga Reactor
- U.S. Public Health Service: "A Review of Operating Experience of University-Owned and Operated Triga Research Reactors, by Evan J. Vineberg, January, 1970)
- Mrs. Anna M. Bennett: Letter of Nov. 14, 1969
- City of New York, Board of Water Supply: Report to the Board of Estimate on The Third City Tunnel, First Stage, in the Boroughs of the Bronx, Manhattan & Queens
- D.H. Newland: Earthquakes ^{In} New York State
- N.Y. State Atomic & Space Development Authority: Annual Report for Apr/65 - March/66
- Mary Hays Weik: Atoms On the Campus (1969)
-
- (A number of photographic exhibits are bound directly in the text to make them convenient for reference.)

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Brief was served today by mail upon each of the parties below:

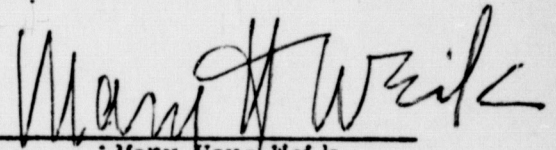
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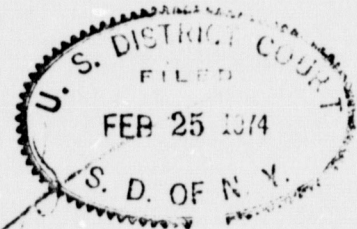
Mrs. Anna M. Bennett
2340 Virginia Street
Berkeley, Calif. 94709

(Signed)



Mary Hays Weik
166 Second Ave.
New York, N.Y. 10003

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
MARY HAYS WEIK,

Plaintiff,

-against-

COLUMBIA UNIVERSITY,

Defendant.
-----X

FINAL ORDER
AND JUDGMENT

Index No.

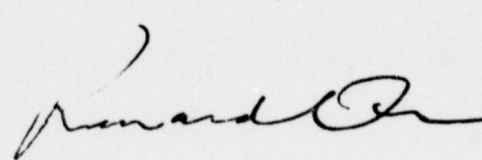
72 Civil 2236
(RO)

Ro. The defendant's motion for judgment on the pleadings having come on to be heard before this court on February 15, 1974, *and the court having given full consideration to the plaintiff's brief dated February 15, 1974 in opposition* and it appearing that the court lacks jurisdiction over the subject matter of the lawsuit, it is

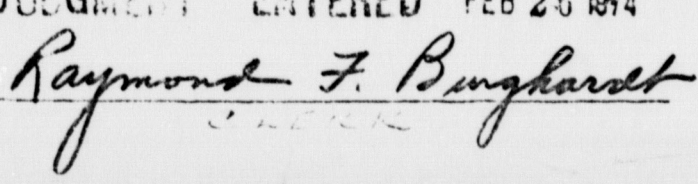
Ro. ORDERED that defendant's motion for judgment ~~on the pleadings~~ be and the same is hereby granted, and it is further

Ro. ORDERED, ADJUDGED AND DECREED, that the complaint herein be and the same is hereby dismissed *for lack of jurisdiction* ~~with prejudice~~ *jurisdiction*

Dated: New York, New York
February 25, 1974


United States District Judge (2)

JUDGMENT ENTERED FEB 26 1974


Raymond F. Bingham
CLERK

MARCH 19-74

CIVIL DOCKET

UNITED STATES DISTRICT COURT

PRO SE
D. C. Form No. 106 Rev.

JUDGE OWEN

Jury demand date:

72 CIV. 2236

PRO SE

TITLE OF CASE

MARY HAYS WEIK

AGAINST

COLUMBIA UNIVERSITY

ATTORNEYS

For plaintiff:

MARY HAYS WEIK (PRO SE)
166 SECOND AVENUE
NEW YORK, N.Y. 10003

For defendant:

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40 Wall Street
New York, N.Y. 10005

72 CIV. 2236

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	PAGE	DISH.
J.S. 5 mailed X	Clerk		5/23/72	J. H. L. L. L.	15 -	
J.S. 6 mailed ✓	Marshal		6/23/72	H. H. L. L.	5 -	15 -
Basis of Action: Civil Rights 42 USC 1983	Docket fee		6/27/72	H. H. L. L.	5 -	5 -
	Witness fees					
Action arose at:	Depositions				A	

MARY HAYS WEIK AGAINST COLUMBIA UNIVERSITY

PRO SE

72 CIV. 2236

DATE	PROCEEDINGS	Date of Judgment
MAY 23-72	Filed Complaint. Issued Summons.	
May 26-72	Filed order to show Cause re: Pro. Inj. Ret. 5/30/72. (by pltf.)	
Jun. 9-72	Filed Affdvt. of John W. Wheeler, for deft. in opposition to pltf's application for preliminary injunction.	
Jun. 9-72	Filed Affdvt. of Bennett Boskey, for deft.	
Jun. 9-72	Filed deft's Memorandum of Law	
JUN 9-72	Filed ANSWER of defendant to complaint.	TPFC
Jun 13-72	Filed (in court) Statement of Mary Hays Weik.	
Jun 20-72	Filed MEMO. on order to show cause filed 5/24/72 Motion denied. The factual recital in support of the motion is bare. There is clearly an insufficient showing of probability of success at trial. So ordered. Cooper, J.	
Jun 23-72	Filed Notice of Appeal by pltf. (mailed notice)	
Jun 27-72	Filed stipulation for dismissal of appeal.	
Feb. 4-74	Filed Affidavit of Intention by Mary Hays Weik.	
Feb. 4-74	Filed Findings of Fact & Conclusions by Mary Hays Weik. Intervenor.	
Feb. 7-74	Filed Deft's Memorandum of law in support of his motion for judgment on the pleadings.	
Feb 7-74	Filed Deft. Notice of Motion. Re: Judgment. Ret. 2/15/74	TPC
Feb. 13-74	Mailed notice of reassignment.	
2/14/74	Pre-trial before Owen J.	
Feb. 15-74	Filed memo endorsed on motion filed 2-7-74--Motion granted-Submit Order-Owen, J.	
Feb 25-74	Final Order & Judgment. Order that the complaint is dismissed for lack of jurisdiction. Owen J. (mailed notice)	
Mar 15-74	Filed Order that the petitioner is permitted to proceed in forma pauperis without prepayment of fees. Owen J.	
Mar 16-74	Filed Notice of Appeal from Final Order & Judgment dated 2/25/74. (mailed notice)	
Mar 16-74	Filed pltf's. brief in opposition to order to dismiss.	

B

ONLY COPY AVAILABLE